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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 SCCT-01 CIAE-00 DODE-00 PM-04

H-02 INR-07 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

NSCE-00 SSO-00 USIE-00 INRE-00 IO-13 CAB-02 COME-00

DOT-00 EB-07 CIEP-01 FAA-00 DHA-02 SY-05 /084 W

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FM USMISSION USBERLIN

TO AMEMBASSY BONN IMMEDIATE

INFO SECSTATE WASHDC IMMEDIATE 2743

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1372

C O R R E C T E D C O P Y (MRN 1372 VICE 1373)

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW

SUBJ: POSSIBLE FEDERAL PROSECUTION OF LORENZ KIDNAPPERS

REF: BONN 10973

1. SUMMARY: BUNDESTAG HAS PASSED NEW ANTI-TERRORISM LAW WHICH WOULD INCREASE RESPONSIBILITIES OF FEDERAL PROSECUTURO AND DECREASE CORRESPONDINGLY THOSE OF LAENDER AUTHORITIES. THIS LAW STILL FACES HURDLES IN BUNDESRAT, BUT IT MAY BE ON AGENDA OF BERLIN HOUSE OF REPRESENTATIVES FOR ADOPTION AS EARLY AS JUL 21. ALLIES WILL THUS PROBABLY NEED VERY SHORTLY TO ADOPT A POSITION ON WHETHER AND UNDER WHAT CIRCUMSTANCE THEY ARE PREPARED TO PERMIT THESE NEW COMPETENCE TO BE ASSUMED IN BERLIN BY FEDERAL PROSECUTOR. OUR INCLINATION IS TO ENCOURAGE ALLIES AND FRG TO CONSIDER THIS QUESTION IN CONNECTION WITH RELATED IMMEDIATE PROBLEM OF WHETHER OR NOT FEDERAL PROSECUTURO IS TO BE AUTHORIZED TO HANDLE CASE AGAINST LORENZ KIDNAPPERS IN BERLIN. WE SEE CHANCE TO USE NEW LAW AS OCCASION TO TIGHTEN ALLIED CONTROL OVER BERLIN ACTIVITIES OF FEDERAL PROSECUTOR AND
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TO USE THIS DEVELOPMENT AS MEANS TO INTRODUCE PRACTICAL

POLITICAL CONTROLS OVER CONDITIONS UNDER WHICH LORENZ KIDNAPPING PROSECUTION WOULD BE HANDLED. HOPEFULLY THIS PACKAGE WOULD OFFER A LITTLE SOMETHING TO EVERYONE: FRG MIGHT GET FEDERAL PROSECUTION OF LORENZ KIDNAPPING CASE; FRENCH WOULD GET ASSURANCES THAT ALLIES WOULD HAVE GREATER OPPORTUNITIES IN FUTURE TO CONTROL FEDERAL PROSECUTOR'S ACTIVITIES; AND SOVIETS WOULD BE SHOWN THAT ALLIES, WHILE NOT PREPARED TO CUT FEDERAL PROSECUTOR ENTIRELY OUT OF BERLIN AFFAIRS, WERE TAKING SPECIAL MEASURES TO ENSURE THAT THAT OFFICIAL DID NOT ENGAGE IN DEMONSTRATIVE NEW ACTIONS. END SUMMARY.

2. ADDRESSEES WILL RECALL THAT BOTH GOVERNMENT AND OPPOSITION INTRODUCED BUNDESTAG BILLS IN AFTERMATH OF LORENZ KIDNAPPING AND STOCKHOLM EMBASSY AFFAIR DESIGNED TO STRENGTHEN LEGAL WEAPONS AGAINST TERRORISM. WE POUCH TO EMBASSY (PFUND) AND DEPARTMENT (L/EUR) IN DECEMBER A LENGTHY MEMORANDUM BY FRENCH MISSION LEGAL ADVISER ANALYZING BERLIN ASPECTS OF THESE DRAFTS. BUNDESTAG PASSED GOVERNMENT BILL JUNE 24 ON STRAIGHT PARTY VOTE. BILL WOULD AMEND CRIMINAL CODE TO MAKE IT A CRIME TO FORM OR PARTICIPATE IN TERRORIST ORGANIZATION (AS OPPOSED TO SIMPLE CRIMINAL ORGANIZATION) AND WOULD ASSIGN COMPETENCE IN MATTERS INVOLVING TERRORIST ORGANIZATIONS TO FEDERAL PROSECUTOR THROUGH AMENDMENT OF LAW ON CONSTITUTION OF THE COURTS. SIGNIFICANCE OF FORMER PROVISION FOR BERLIN IS THAT PART OF DEFINITION OF TERRORIST ORGANIZATION IS ORGANIZATION FORMED TO ENGAGE IN ACTS SUCH AS KIDNAPPING, TAKING OF HOSTAGES OR MEASURES DIRECTED AGAINST RAIL, WATERWAY AND AIR TRAFFIC INCLUDING AIR PIRACY. A NUMBER OF THESE MEASURES WOULD FALL WITHIN AREAS WHERE ALLIES HAVE RETAINED RIGHT TO INTERVENE DIRECTLY IN FURTHERANCE OF OUR RESPONSIBILITIES FOR BERLIN SECURITY. LATTER PROVISION WOULD MAKE MORE AUTOMATIC DECISION OF FEDERAL PROSECUTOR TO TAKE INVESTIGATION AND PROSECUTION OUT OF HANDS OF LOCAL AUTHORITIES. ON ITS FACE, THEREFORE, NEW LAW WOULD SEEM TO REQUIRE SOME SORT OF ALLIED RESERVATIONS.

3. IT IS NOT YET CLEAR IF AND WHEN THIS BILL WILL BECOME CONFIDENTIAL

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LAW, COU/CSU HAVE CRITICIZED IT AS "LIMP" AND "HALF-HEARTED" MEASURE INTENDED TO SERVE ONLY AS PALLIATIVE.

IT IS STILL PUSHING FOR ITS OWN TOUGHER DRAFT. BILL WILL BE CONSIDERED BY BUNDESRAT JULY 16. IF IT PASSES, IT WILL BE SIGNED QUICKLY BY FRG PRESIDENT AND WILL BE PLACED ON AGENDA OF BERLIN HOUSE OF REPRESENTATIVES WHICH HAS SCHEDULED SPECIAL SESSION JULY 21 TO ADOPT BY

MANTELGESERZ FINAL LAWS PASSED BY FRG PARLIAMENT BEFORE SUMMER PAUSE. WE HAVE SEEN NEWSPAPER SPECULATION, HOWEVER, THAT OPPOSITION WILL USE ITS MAJORITY IN UPPER HOUSE TO VOTE BILL DOWN WHEN IT COMES BEFORE BUNDESRAT. IF THAT HAPPENS, IT IS POSSIBLE THAT PARTIES WILL AGREE TO DEFER FURTHER LEGISLATIVE ACTION UNTIL AFTER FRG ELECTION AND THAT BILL WILL BECOME FOCUS OF LAW AND ORDER CAMPAIGN ISSUE. IT IS ALSO POSSIBLE THAT BUNDESRAT WOULD SEEK TO CONVINCE CONCILIATION COMMISSION OF BUNDESRAT AND BUNDESTAG TO WORK OUT COMPROMISE. THIRD POSSIBILITY IS THAT GOVERNMENT COALITION WOULD DECIDE THAT THIS IS LAW THAT DOES NOT REQUIRE BUNDESRAT APPROVAL AND THAT IT COULD BE QUICKLY REPASSED BY BUNDESTAG AND SIGNED INTO FORCE BY PRESIDENT. IN LATTER EVENTUALITY JULY 21 MANGELGESETZ ACTION IN BERLIN WOULD PROBABLY BE FEASIBLE. WE HAVE ALSO SEEN PRESS REPORT THAT GOVERNMENT COALITION MAY CALL SPECIAL END OF JULY SESSION OF BUNDESTAG TO DEAL PRIMARILY WITH VOCATIONAL TRAINING LAW. PAPERS SPECULATE THAT THIS SESSION MIGHT ALSO BE USED TO WORK OUT FINAL FORM OF ANTI-TERRORISM LAW IF THAT BILL IS NOT APPROVED BY BUNDESRAT IN PRESENT FORM BERLIN HOUSE MIGHT THEN CONVENE ITS OWN SPECIAL SESSION FOR MANTELGESETZ PURPOSE.

4. WHETHER OR NOT BILL IS READY FOR ADOPTION IN BERLIN AS EARLY AS JULY 21, IT WOULD SEEM LIKELY THAT SOME FORM OF ANTI-TERRORISM LAW INCREASING COMPETENCE OF FEDERAL PROSECUTOR WILL BE PASSED IN FAIRLY NEAR FUTURE. THIS PRESENTS BOTH POTENTIAL PROBLEMS AND OPPORTUNITIES FOR US IN BERLIN. PROBLEMS ARE PERHAPS MORE IMMEDIATELY OBVIOUS. WE HAVE ALREADY HEARD FRENCH MISSION COMMENTS TO EFFECT THAT ALLIES MIGHT HAVE TO REMOVE BILL FROM HOUSE OF REPRESENTATIVES AGENDA IF IT IS READY JULY 21 AND MIGHT CONFIDENTIAL

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HAVE TO CONSIDER DRASTIC RESTRICTIONS ON ITS EVER COMING INTO FORCE IN CITY. THESE VIEWS ARE CONSISTENT WITH NEGATIVE FRENCH ATTITUDE ON FEDERAL PROSECUTION OF LORENZ KIDNAPPERS. WE SHARE FRENCH JUDGEMENT THAT IT WOULD NOT BE POSSIBLE FOR ALLIES TO PERMIT ADOPTION IN BERLIN OF NEW LAW WITHOUT RESERVATION. IF ALLIES WERE SIMPLY TO DEFER ACTION ON BILL, HOWEVER, WE WOULD BE CONCERNED THAT WE WOULD COME IN FOR SEVERE GERMAN CRITICISM, PARTICULARLY IF LORENZ KIDNAPPING ISSUE WERE STILL STUCK ON DEAD CENTER, GERMANS WOULD EXPRESS CONCERN THAT ALLIES WERE CREATING NEW GAP IN CHERISHED LEGAL UNITY THEORY AND WERE CUTTING BACK ON LONG-EXISTING BERLIN-BONN TIF. ALLIED POSITION WOULD PROBABLY BE VIEWED AS RETREAT IN FACE OF SOVIET PRESSURE AND COULD THEN BECOME ISSUE IN FRG ELECTION CAMPAIGN.

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Draft Date: 01 JUL 1976
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